

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY DAVID-WILLIAM MIRACLE,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2007

No. 266035

Oakland Circuit Court

LC No. 05-203232-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant was convicted by a jury of failing to register as a sex offender, MCL 28.729(1), and was sentenced as a second habitual offender, MCL 769.10, to 28 to 72 months' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was first registered as a sex offender after being convicted of third-degree criminal sexual conduct, MCL 750.520d, in February 2002. On March 17, 2005, defendant was released from prison. Upon his release, defendant moved into an apartment with a family. He failed to notify local law enforcement officials of his change in address within ten days, as required by MCL 28.725(1). At the time of his arrest on April 8, 2005, he admitted to the police he had been living at the address since his release from prison.

Defendant argues that his trial counsel was ineffective for failing to assert that he was merely negligent in failing to timely change his address with local law enforcement authorities. We disagree.

Whether there has been a deprivation of the effective assistance of counsel is a mixed question of law and fact. The factual findings are reviewed for clear error and the matters of law are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

We find that defense counsel did advocate the position that defendant now claims was absent at trial. During closing arguments, counsel specifically stated, "But my client did not intentionally do anything wrong with regard to this charge, and keep in mind. Intentionally. He's got to intentionally avoid something. That didn't happen." Defense counsel went on to argue that defendant was forthright about his address with his parole officer and later with the police. He argued that this suggested defendant had nothing to hide and was not intentionally

concealing his address. Because trial counsel did make the argument that defendant's failure to update his address was merely negligent, we find counsel was not ineffective.

Next, defendant argues that the prosecution failed to present any evidence that he willfully failed to register under MCL 28.725(1) and that the evidence conclusively established that he had no ulterior motive or bad purpose in failing to register the new address. We disagree.

"In reviewing a claim of insufficient evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). However, this Court should not "interfere with the jury's role of determining the weight of the evidence or deciding the credibility of the witnesses." *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

MCL 28.729(1) makes it a felony to willfully violate the Sex Offenders Registration Act. The act does not define the term "willfulness." However, the trial court instructed the jury, without objection by defendant, that the prosecution must prove "that the defendant intentionally failed to notify the local law enforcement agency of his change of residence." Jurors are presumed to follow the trial court's instructions. *People v Graves*, 458 Mich 476, 486-487; 581 NW2d 229 (1998).

Defendant's argument hinges on the contention that his failure to change his address was the result of mere forgetfulness or negligence, not intentional conduct. While the evidence could possibly support such a conclusion, the role of this Court is limited to determining whether a rational jury could conclude that defendant acted willfully.

Viewing the evidence in a light most favorable to the prosecution, we conclude there was sufficient evidence presented at trial for a rational trier of fact to find the "willfulness" element was established beyond a reasonable doubt. The prosecution presented evidence that defendant filled out and signed two copies of the DD4A form acknowledging his duty to update any change of address as a sex offender within ten days of a change of address. Defendant was given copies of both forms, which undisputedly contained the ten-day provision. The prosecution presented evidence that defendant had updated his address four previous times. There was evidence that defendant was released on March 17, 2005, and that on March 22, 2005, he gave his probation officer the address on Cooley Village Lane. There was evidence that during this time period, the Michigan sex offender registry listed defendant's address as 7020 Roundhill, Apt. B-1, Waterford, Michigan, 48372. The police officer who arrested defendant on April 8, 2005 testified that defendant admitted he had been living at and paying rent at the Cooley Village Lane apartment since his release from prison. We hold that a rational trier of fact could conclude from the above evidence that defendant willfully failed to register his change of address within ten days as required by statute.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Jessica R. Cooper